IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

WP(C).No. 22505 of 2004(D)

OS.566/1999 of MUNSIFF COURT,KAYAMKULAM

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PETITIONERS:

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1. REGHUPATHI, W/O.ANIRUDHAN,
MAMMOOTTIL HOUSE, KANDALLOOR NORTH,
KANDALLOOR VILLAGE, KAYAMKULAM.

2. ANIRUDHAN, DO. DO. DO.

BY ADV. SRI.K.HARILAL

RESPONDENTS:

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1. SIVANKUTTY, SHANMUGHALAYATHIL,
MAMMOOTTIL, KANDALLOR NORTH MURI,
KANDALLOOR VILLAGE, KAYAMKULAM.

2. KARUNAKARAN, VELUTHARAYIL HOUSE,
KANDALLOOR NORTH MURI, KANDALLOOR VILLAGE,
KAYAMKULAM.

3. KUNJULAKSHMI, DO. DO.

4. RANJAN, S/O.KARUNAKARAN, OF DO. DO.(DELETED)

THE NAME OF 4TH RESPONDENT IS DELETED FROM THE PARTY ARRAY AS PER ORDER DATED 6-1-2006 IN W.P.(C).

BY ADV. SRI.C.RAJENDRAN
SRI.S.SHANAVAS KHAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.22505/2004

APPENDIX:

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF COMMON ORDER IN I.A.NO. 1223/2—4 AND DI.A.NO.1293/2004 IN O.S.NO. 566/99 OF THE COURT OF THE MUNSIFF, KAYAMKULAM DATED 19-6-2004.

KS.

TRUE COPY

P.S.TO JUDGE

PIUS C. KURIAKOSE, J.

W.P.(C)No. 22505 OF 2004

DATED THIS THE 30th NOVEMBER , 2007

J U D G M E N T

The challenge in this writ petition under Article 227 of the Constitution of India initiated by 2nd and 3rd plaintiffs in O.S.No.566/1999 on the file of the Munsiff Court, Kayamkulam is Ext.P1 common order in I.A.No.1223/2004 and 1293/2004. The suit in question was one for perpetual injunction restraining the defendants (respondents 2 to 4) from obstructing D schedule pathway passing through the defendants' property. On the defendants entering appearance, the case was referred to the Adalat. During the course of deliberation before the Adalat, an offer was made by the defendants to give right of way to the plaintiffs through the northern side of the property where another pathway was already in existence. It is stated that the above offer was acceptable to the petitioners who are plaintiffs 2 and 3. However, the first plaintiff who is arrayed as the first respondent in this writ petition was not agreeable for that offer.

Thus the case could not be settled in the Adalat. It appears that the defendants stood by their offers and therefore, I.A.1223/2004 was filed by the petitioners/plaintiffs 2 and 3 for withdrawing the suit to the extent to the same to them. Noticing the above application, first respondent/first plaintiff filed I.A.No.1293/2004 for transposing plaintiffs 2 and 3 (writ petitioners) as additional defendants 4 and 5. The learned Munsiff under the impugned common order dismissed I.A.No.1223/2004 and allowed the first respondent's application for transposition of the petitioners as additional defendants. Impugning Ext.P1 common order on various grounds the petitioners pray that Ext.P1 be quashed and orders be passed allowing I.A.No.1223/2004 and simultaneously dismissing I.A.No.1293/2004.

2. I have heard the submissions of Sri.K.Harilal, learned counsel for the petitioner and those of Sri.C.Rajendran, learned counsel for the contesting first respondent. I have also heard the submissions of Sri. Shanavas Khan, learned counsel for respondent Nos.2 and 3. Sri. K.Harilal would make arguments

on the basis of the various grounds raised. He brought to my attention to Order XXIII Rules 1 and 4 of the Code of Civil procedure. He submitted that the learned Munsiff has not considered those provisions correctly. The plaintiffs have every right to decide whether or not to continue the suit. He further submitted that there is no provision at all in the C.P.C.for transposing the defendant as plaintiff. The impugned order therefore amounts erroneous exercise of jurisdiction justifying interference by this Court under the supervisory jurisdiction conferred by virtue of Article 227 of the Constitution. Transposition of a defendant as plaintiff, according to him, is permissible only when the plaintiff abandons the suit and the cause of action survives to the defendant. In the instant case even if petition filed by the petitioners had been allowed, the suit would have been continued and decreed or dismissed since one plaintiff continued on the array of parties as plaintiff.

3. I would have been inclined to accept the submissions of Mr.Harilal particularly since they are apparently supported by the view taken by justice Narendran in **Narayanan v.**

Manjadimoodu Coir Co-Op.Society, 1985 K.L.T.893. Learned counsel for the respondent would invite my attention to the judgment of the Division Bench in **Janadas v. Vedanayagam, 2004(3)K.L.T.425.** The view taken by the learned Munsiff in Ext.P1 finds support from the judgment of the Division Bench in Janadas case though the learned Munsiff appears to have taken its view and issued Ext.P1 on first principles. It cannot be said that the impugned order is so wholly unreasonable or passed without jurisdiction so as to warrant invocation of the supervisory jurisdiction of this court under Article 227. Jurisdiction under Article 227 is visitorial in nature and exercise of that jurisdiction is made very sparingly. The result is that challenge against the impugned order fails and the writ petition will stand dismissed.

(PIUS C.KURIAKOSE, JUDGE)

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